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October 22, 2003

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TO: Examiner Horlick (TC1600)

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GROUP: 1637

OCT 22

FAX NUMBER: 703-872-9306

ATTORNEY DOCKET NO.: DEX-0275

SERIAL NO.: 10/001,873

FILED: November 20, 2001

NUMBER OF PAGES:

MESSAGE: Attached please find Amendment Transmittal Letter, Reply to Restriction Requirement and Certificate of Transmission by Facsimile.

Kathleen A. Tyrrell, Registration No. 38,350

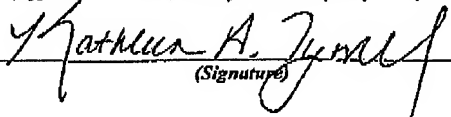
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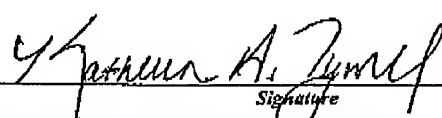
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Applicant(s): Macina et al.		Docket No. DEX-0275	
Serial No. 10/001,873	Filing Date November 20, 2001	Examiner Horlick, Kenneth R.	Group Art Unit 1637
Invention: Compositions and Methods Relating to Lung Specific Genes and Proteins			
I hereby certify that this _____ <div style="text-align: center;">Reply to Restriction Requirement <small>(Identify type of correspondence)</small></div> is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. 703-872-9306) on <u>October 22, 2003</u> <div style="text-align: center;"><small>(Date)</small></div> <div style="text-align: right; margin-top: 100px;">_____ Kathleen A. Tyrrell <small>(Typed or Printed Name of Person Signing Certificate)</small>  <small>(Signature)</small></div> <div style="text-align: center; margin-top: 50px;">Note: Each paper must have its own certificate of mailing.</div>			

AMENDMENT TRANSMITTAL LETTER (Large Entity)			Docket No. DEX-0275		
Applicant(s): Macina et al.					
Serial No. 10/001,873	Filing Date November 20, 2001	Examiner Horlick, Kenneth R.		Group Art Unit 1637	
Invention: Compositions and Methods Relating to Lung Specific Genes and Proteins					
<u>TO THE COMMISSIONER FOR PATENTS:</u>					
Transmitted herewith is an amendment in the above-identified application. The fee has been calculated and is transmitted as shown below.					
CLAIMS AS AMENDED					
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST # PREV. PAID FOR	NUMBER EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	19 -	20 =	0 x	\$18.00	\$0.00
INDEP. CLAIMS	2 -	3 =	0 x	\$86.00	\$0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					\$0.00
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT					\$0.00
 <input checked="" type="checkbox"/> No additional fee is required for amendment. <input type="checkbox"/> Please charge Deposit Account No. _____ in the amount of _____ <input type="checkbox"/> A check in the amount of _____ to cover the filing fee is enclosed. <input checked="" type="checkbox"/> The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 50-1619 <input checked="" type="checkbox"/> Any additional filing fees required under 37 C.F.R. 1.16. <input checked="" type="checkbox"/> Any patent application processing fees under 37 CFR 1.17.					
 _____ Kathleen A. Tyrrell, Reg. No. 38,350			Dated: October 22, 2003		
Licata & Tyrrell P.C. 66 East Main Street Marlton, New Jersey 08053 Tel : 856-810-1515 Fax: 856-810-1454			<div style="border-bottom: 1px solid black; margin-bottom: 5px;">I certify that this document and fee is being deposited on _____ with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;">Signature of Person Mailing Correspondence</div> <div style="border-bottom: 1px solid black;">Typed or Printed Name of Person Mailing Correspondence</div>		
CC:					

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No.: DEX-0275
Inventors: Macina et al.
Serial No.: 10/001,873
Filing Date: November 20, 2001
Examiner: Horlick, Kenneth R.
Group Art Unit: 1637
Title: Compositions and Methods Relating to
Lung Specific Genes and Proteins

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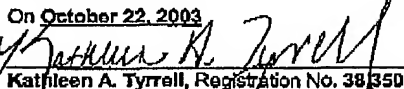
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I hereby certify that this document is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

On October 22, 2003


Kathleen A. Tyrrell, Registration No. 38350

Mail Stop
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Reply to Restriction Requirement

This is a reply to the Restriction Requirement mailed September 22, 2002 setting a one (1) month statutory period for response. Please enter the following remarks into the record.

Remarks begin on page 2.

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REMARKS

Claims 1-17 are pending in the instant application. Claims 1-17 have been subjected to a Restriction Requirement as follows:

Group I, claims 1-5, 7-9 and 15 (partial), drawn to nucleic acids, vectors, host cells and methods of making a polypeptide, classified in class 536, subclass 23.1, and class 435, subclasses 69.1, 320.1 and 325, for example;

Group II, claim 10-11, drawn to polypeptides, classified in class 530, subclass 350, for example;

Group III, claims 12 and 15 (partial), drawn to an antibody, classified in class 530, subclass 387.1, for example;

Group IV, claims 6 and 14 (partial), drawn to a method of determining the presence of a nucleic acid, classified in class 435, subclass 6;

Group V, claims 13 and 14 (partial), drawn to a method of determining the presence of a polypeptide, classified in class 435, subclass 7.1, for example;

Group VI, claim 16, drawn to a method for treating a patient with lung cancer by administering an antibody, classified in class 514, subclass 2, for example;

Group VII, claim 17 (partial), drawn to a vaccine comprising a polypeptide, classified in class 514, subclass 2; and

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Group VIII, claim 17 (partial), drawn to a vaccine comprising a nucleic acid, classified in class 514, subclass 44.

The Examiner suggests that these Groups are distinct.

Specifically, with respect to Groups I, II, III, VII and VIII, the Examiner suggests that the claims are drawn to different products having different structures and functions.

With respect to Groups I and IV, and Groups III and (V,VI), the Examiner has acknowledged their relationship as product and process of use. However, the Examiner suggests that the Groups are distinct because the products can be used in materially different methods or processes.

With respect to Groups I and (V, VI), Groups II and (IV, V and VI), Groups III and IV, Groups IV-VI, and Groups (IV-VI) and (VII,VIII), the Examiner suggests that the Groups are unrelated because the different Groups are not required for one another.

Further, the Examiner suggests that each of Groups I-VIII are drawn to a multitude of nucleic acids, polypeptides, and antibodies thereto which are independent and distinct. Thus, the Examiner is also requiring election of a single nucleic acid, polypeptide or antibody.

Applicants respectfully traverse this Restriction Requirement.

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MPEP §803 provides two criteria which must be met for a restriction requirement to be proper. The first is that the inventions be independent or distinct. The second is that there would be a serious burden on the Examiner if the restriction is not required. A search of prior art relating to an elected nucleic acid, polypeptide or antibody would also reveal any references teaching uses for the nucleic acid, polypeptide or antibody. Accordingly, Applicants believe that searching of all the claims, at least when limited to elected nucleic acids or polypeptides is overlapping and would not place an undue burden on the Examiner if the Restriction is not made.

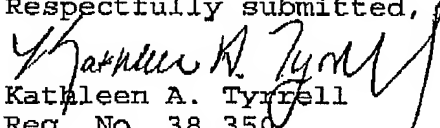
Thus, since this Restriction Requirement does not meet both criteria as set forth in MPEP § 803 to be proper, reconsideration and withdrawal of this Restriction Requirement is respectfully requested.

In addition, with respect to the election of a single sequence, MPEP § 803.04 clearly states that a reasonable number of nucleotide sequences, normally ten sequences, can be claimed in a single application. Accordingly, withdrawal of this sequence election requirement and reconsideration to include a more reasonable number of at least 10 sequences in accordance with MPEP § 803.04 is also respectfully requested.

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However, in an earnest effort to advance the prosecution of this case, Applicants elect Group I, claims 1-5, 7-9 and 15, SEQ ID NO:24 encoding SEQ ID NO:52, with traverse. Inclusion of SEQ ID NO:23 in the prosecution of this case is respectfully requested since it is a subsequence of SEQ ID NO:24.

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record.

Respectfully submitted,

Kathleen A. Tyrrell
Reg. No. 38,350

Date: October 22, 2003

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